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No. 81-61

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, et al.,
Petitioners,

v.

GRACIE ROBINSON AND JUANITA HAGER, etc.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR PETITIONERS

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November 19, 1981

QUESTIONS PRESENTED

1. Whether the substantive terms of a collective bargaining agreement, embodied in an employee benefit trust, are subject to review by federal courts for reasonableness, pursuant to Section 302(c)(5) of the Taft-Hartley Act, 29 U.S.C. § 186(c)(5) (1976).

2. Whether Section 302(c)(5) of the Taft-Hartley Act requires a collective bargaining party to commit an unfair labor practice by bargaining to impasse on behalf of widows who are not members of the bargaining unit.

PARTIES TO THE PROCEEDINGS IN THE COURT OF APPEALS

The following individuals were parties to the proceedings in the Court of Appeals:

Gracie Robinson and Juanita Hager, on behalf of themselves and all other persons similarly situated, were appellants below and are respondents herein.

Julius Mullins, John J. O'Connell, and Paul R. Dean, in their capacities as Trustees of the United Mine Workers of America 1950 Benefit Plan and Trust, one of four separate employee benefit trust funds collectively known as the United Mine Workers of America Health and Retirement Funds ("Funds"), were appellees below. In July, 1979, Harrison Combs succeeded Julius Mullins as Trustee and, together with John J. O'Connell and Paul R. Dean, is a petitioner herein.

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit, reported at 640 F.2d 416, appears as Appendix A to the petition for a writ of certiorari (P.A.1a).[1] The judgment of the United States District Court for the District of Columbia from which appeal was taken, and the District Court's unreported memorandum opinion and order of June 20, 1978, appear as Appendices B and C, respectively, to the petition (P.A. 23a-26a). The District Court's memorandum opinion issued on April 25, 1978, reported at 449 F. Supp. 941, appears as Appendix D to the petition (P.A. 27a-34a). The judgment of the Court of Appeals appears as Appendix E to

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[1] The Appendices to the petition for a writ of certiorari are cited herein as "P.A." The Joint Appendix filed herewith is cited herein as "J.A."

the petition (P.A. 35a). The orders of the Court of Appeals denying the petition for rehearing and the suggestion for rehearing *en banc* appear as Appendix F to the petition (P.A. 37a).

JURISDICTION

The judgment of the Court of Appeals was entered on February 5, 1981 (P.A. 35a). The petition for rehearing and suggestion for rehearing *en banc* were denied on April 13, 1981 (P.A. 37a). The petition for a writ of certiorari was filed on July 13, 1981 (J.A. 9). By order entered October 5, 1981, the petition for a writ of certiorari was granted (J.A. 141). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1)(1976).

STATUTES INVOLVED

This case involves Section 302(c)(5) of the Labor-Management Relations Act, 1947 ("Taft-Hartley Act"), 29 U.S.C. § 186(c)(5); Section 2(3) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 152(3); and Section 8(b)(3) of the NLRA, 29 U.S.C. § 158(b)(3). These statutory provisions are set forth in the Joint Appendix (J.A. 145). The case also involves the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.*

STATEMENT OF THE CASE

Statement of Proceedings

On April 22, 1977, Gracie Robinson ("Robinson") and Juanita Hager ("Hager"), on behalf of themselves and all other persons similarly situated, filed a complaint against the United Mine Workers of America ("UMWA") 1950 Benefit Plan and Trust ("1950 Benefit Trust") and its Trustees in the United States District Court for the District of Columbia. The complaint alleged that Article II. E. of the 1950 Benefit Trust was arbitrary and capricious, in violation of Section 302(c)(5) of the Taft-Hartley Act, insofar as it provided life-time health coverage to the survivors of retired miners who died prior to December 6, 1974, while "receiving" pensions, but not to the survivors of miners who, although age and service-eligible for pensions, died before December 6, 1974, while still employed. The complaint further alleged that the Trustees' denial of life-time health coverage to Robinson and Hager, solely on the basis that their husbands were not "receiving" pensions at the time of death, constituted a breach of the Trustees' fiduciary duty, under Section 302(c)(5) of the Taft-Hartley Act, to administer the 1950 Benefit Trust "for the sole and exclusive benefit of the employees of contributing . . . employers," and their families and dependents. (J.A. 3, 13, 14.)

The Trustees answered on May 12, 1977, denying that Article II. E. of the 1950 Benefit Trust was arbitrary and capricious in violation of Section 302(c)(5) of the Taft-Hartley Act, or that they had breached their fiduciary duty under Section 302(c)(5) of the Act by denying life-time health coverage to Robinson and Hager, and others similarly situated. And, by way of defense, the Trustees stated that the eligibility terms of the 1950 Benefit Trust were established by collective bargaining between the United Mine Workers of America ("Union") and the Bituminous Coal Operators' Association, Inc. ("Industry"), that they had acted in accordance with the express terms of the Trust, and that they had no authority to alter those terms. (J.A. 3, 31.)

By order entered on September 20, 1977, United States District Judge Gerhard A. Gesell certified the action as a class ac-

tion pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure (J.A. 3, 41).[2] Subsequently, cross motions for summary judgment were filed, and oral argument was heard by Judge Gesell on February 3, 1978. On April 25, 1978, Judge Gesell issued a memorandum opinion and order stating that a trust provision violates Section 302(c)(5) of the Taft-Hartley Act only if it fails to operate for the "sole and exclusive benefit" of employees of contributing employers. In Judge Gesell's view, an "arbitrary" denial of benefits to the class would violate that standard, and, in that event, the Trustees would be required to reform the 1950 Benefit Trust, even though it was the product of collective bargaining. (P.A. 30a.) In that regard, Judge Gesell found that the class had raised a presumption of arbitrariness with respect to the discrepancy between benefits for the survivors of active and retired miners, and that, on the existing record, the Trustees had failed to rebut the presumption by producing a rationale for the discrepancy (P.A. 31a-32a). Accordingly, Judge Gesell ordered that the Trustees would have until May 12, 1978, to produce relevant testimony from the Union and the Industry, and that in the event no testimony was forthcoming, summary judgment would be granted to the class and denied to the Trustees (P.A. 32a-34a).

Pursuant to the order, the Trustees submitted documentary evidence and oral testimony concerning the circumstances leading to the disputed provision at a hearing before Judge

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[2] The class was defined as all surviving spouses and dependent children of deceased coal miners:

(a) whose decedents prior to the time of death satisfied the age and service requirements for pension benefits;

(b) who would be eligible for survivors' health benefits under the terms of the 1950 Benefit Plan and Trust if their decedents had been receiving pension benefits at the time of death; and

(c) whose decedents fit within one of the following subclasses:

(1) was working in classified service in the coal industry at the time of death and had not applied for a pension;

(2) had applied for and was eligible to receive pension benefits but was not receiving such benefits at the time of death because of his return to classified service in the coal industry. [J.A. 41-42.]

Gesell on June 14, 1978 (P.A. 24a; J.A. 61). Based on that evidence, Judge Gesell concluded, in a memorandum opinion and order entered on June 20, 1978, that the exclusion of the class from life-time health coverage was a ". . . legitimate product of deliberate and good-faith collective bargaining . . ." that was not subject to judicial review (P.A. 25a). Judgment was entered for the Trustees on June 20, 1978 (P.A. 23a).

The class appealed, and, on February 5, 1981, a divided panel of the United States Court of Appeals for the District of Columbia Circuit reversed the judgment of the District Court (P.A. 1a, 21a).[3] On March 6, 1981, the Trustees petitioned the Court of Appeals for rehearing and suggested rehearing *en banc*. A divided panel of the Court of Appeals denied the petition for rehearing on April 13, 1981 (P.A. 38a).[4] On the same date, the full Court denied the suggestion for rehearing *en banc* by a majority vote (P.A. 37a).[5] On July 13, 1981, the Trustees petitioned the Supreme Court for a writ of certiorari to the Court of Appeals (J.A. 9). The petition was granted by order entered on October 5, 1981 (J.A. 141).

Statement of Facts

Respondents, Robinson and Hager, are the named representatives of a certified class consisting of the widows and dependents of coal miners who died before December 6, 1974, while employed, and who, at the time of death, were age and service-eligible for pensions under the UMWA Welfare and Retirement Fund of 1950 ("1950 Fund") (J.A. 41; P.A. 73a-74a).

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[3] The case was heard before Circuit Judges Robinson and Robb, and Judge Davis, United States Court of Claims, sitting by designation. The opinion of the Court of Appeals was filed by Circuit Judge Robinson. Judge Davis filed a concurring opinion. Circuit Judge Robb filed a dissenting opinion. (P.A. 2a.)

[4] Circuit Judge Robb voted to grant the petition for rehearing (P.A. 38a).

[5] Chief Judge McGowan and Circuit Judges Wright, Robinson, Wilkey, Wald, Mikva, Edwards, and Ginsburg voted to deny the suggestion for rehearing *en banc*. Circuit Judges Tamm, MacKinnon, and Robb voted to rehear the matter *en banc*. (P.A. 37a.)

The 1950 Fund was established by the Union and the Industry in the National Bituminous Coal Wage Agreement of 1950 ("1950 Wage Agreement"), pursuant to Section 302(c)(5) of the Taft-Hartley Act, to provide pension, health, and other benefits to certain active and retired miners, and their dependents (P.A. 76a-81a).

In the 1950 Wage Agreement, the parties negotiated the rate of contributions to be paid by the Industry to the 1950 Fund, but they did not negotiate benefit levels or eligibility standards (P.A. 76a, 78a). Instead, the parties agreed that the Trustees of the 1950 Fund would have "full authority" with respect to questions of eligibility and amount of benefits, and that "the detailed basis upon which payments from the [1950] Fund will be made shall be resolved in writing by the . . . Trustees. . . ." (P.A. 78a.)

At the time of the deaths of respondents' husbands, Resolution Nos. 68 and 69, adopted by the Trustees on January 19, 1967, governed the payment of death and health benefits to the widows of active and retired miners who were covered by the 1950 Fund (P.A. 73a-74a, 82a, 89a). Under the terms of the Resolutions, the widows of retired miners receiving pensions at the time of death were entitled to a death benefit of $2,000 and medical benefits for two years (P.A. 85a, 90a). The widows of active miners who were age and service-eligible for pensions, but who died while employed, were entitled to a death benefit of $5,000 and medical benefits for five years (P.A. 85a, 90a). Because their husbands died while employed, Robinson and Hager each received a death benefit of $5,000 and medical benefits for five years (P.A. 74a).

Subsequently, the Union and the Industry entered collective bargaining negotiations that resulted in the adoption of the National Bituminous Coal Wage Agreement of 1974 ("1974 Wage Agreement"), which became effective on December 6, 1974. In the 1974 Wage Agreement, the Union and the Industry dissolved the 1950 Fund and, pursuant to Section 302(c)(5) of the Taft-Hartley Act and the requirements of ERISA, established the four separate employee benefit trusts known as the Funds. (P.A. 93a.)

The Petitioners are the Trustees of each of the four benefit trusts. The particular trust involved in this case is the 1950 Benefit Trust, which provides medical benefits to eligible miners who retired prior to December 6, 1974, and medical and death benefits to the widows and dependents of miners who died before that date (P.A. 114a). Medical and death benefits for the widows and dependents of miners who died after December 6, 1974, are provided by the UMWA 1974 Benefit Plan and Trust ("1974 Benefit Trust").

From the very beginning of the negotiations of the 1974 Wage Agreement, the Union and the Industry were concerned about the newly-enacted requirements of ERISA (J.A. 77, 87, 108-09, 133). The parties were particularly concerned about the minimum funding standards established by ERISA for employee pension trusts (J.A. 108-09, 112). The parties were equally concerned, however, about adequately funding the benefit trusts (J.A. 77, 109-15, 120). And, in order to ensure that employer contributions were sufficient to fund pension and health benefits, the parties decided to negotiate eligibility standards and benefit amounts for the first time (J.A. 108).

At the outset, the Union made a series of demands for improved pension and health benefits. In particular, the Union insisted that health benefits for the widows of pensioners and pension-eligible miners be extended from the two and five-year levels provided by the 1950 Fund, to permanent, life-time coverage under the 1950 and 1974 Benefit Trusts. (J.A. 74-77, 80-82, 110.) The main objective of the Industry, however, was to contain, not extend, the health benefits provided by the 1950 Fund (J.A. 109). Accordingly, the Industry initially opposed the Union's health benefit demands (J.A. 72-76, 110-12).

As negotiations progressed, the Union modified and narrowed its other benefit demands, but continued to insist that all widows of pensioners and pension-eligible miners be given life-time health coverage under the 1950 and 1974 Benefit Trusts (J.A. 75-79). The Industry, however, was determined to limit benefit increases to miners who would work under the 1974 Wage Agreement and who, therefore, would be covered by the 1974 Benefit Trust (J.A. 86). Consistent therewith, the

Industry eventually agreed to provide life-time health coverage under the 1974 Benefit Trust for future widows of miners whose work under the 1974 Wage Agreement would result in contributions to the Trust, but continued to oppose life-time health coverage under the 1950 Benefit Trust for the widows of pensioners and pension-eligible miners who died before the effective date of the Wage Agreement, December 6, 1974 (J.A. 93, 115-16).

The Industry estimated that there were between 25,000 and 50,000 widows of pensioners and pension-eligible miners who died before December 6, 1974 (J.A. 118). The Industry also estimated that the cost of providing health benefits to these widows would rise at a rate of at least twelve and one-half percent during the term of the 1974 Wage Agreement, and was concerned that this estimate might be substantially understated (J.A. 120). In view of these numerical and cost uncertainties, the Industry "had some real financial problems" with providing benefits to these widows "with . . . nobody working to contribute in their behalf. . . ." (J.A. 114-15). Therefore, the Industry consistently rejected the Union's efforts to include the widows in the improved benefits package under the 1950 Benefit Trust (J.A. 114-18).

After nearly two months of negotiation, the parties approached the expiration date of the existing wage agreement and faced the possibility of a prolonged strike in the absence of an agreement (J.A. 87-88, 115-16). By this time, the only issues on which agreement had not been reached were the rate of contributions to be paid by the Industry and the extent of coverage to be provided by the 1950 Benefit Trust to widows of pensioners and pension-eligible miners who died before December 6, 1974 (J.A. 88-92, 114-15).

Notwithstanding the approaching expiration date of the existing wage agreement, the Union continued to demand life-time health coverage under the 1950 Benefit Trust for the widows of pensioners and pension-eligible miners who died before December 6, 1974 (J.A. 89-92, 114-16). The Industry continued to oppose the extension of health coverage for widows covered by the 1950 Benefit Trust (J.A. 114-15). The Industry was par-

ticularly opposed to the extension of health coverage for the widows of pension-eligible miners who died before December 6, 1974, because those widows had already received the larger death benefit of $5,000, and medical benefits for five years, under the 1950 Fund (J.A. 82, 86).

The Industry estimated that funding of the benefits upon which agreement had been reached, including life-time health coverage for future widows of miners under the 1974 Benefit Trust, would require a contribution rate of $1.47 per ton of coal produced. And the Industry offered to finalize negotiations on that basis. (J.A. 115.) The Union rejected this offer, demanded a contribution rate of $1.55 per ton, and, until the last day of the existing wage agreement, continued to demand life-time health coverage under the 1950 Benefit Trust for the widows of both pensioners and pension-eligible miners who died prior to December 6, 1974 (J.A. 115-16).

On the last day of the existing wage agreement, the Industry agreed to the Union's demand for a contribution rate of $1.55 in order to avoid a strike. And, in response to the Union's health benefit demands, the Industry offered to provide life-time health coverage under the 1950 Benefit Trust for the widows of pensioners who died before December 6, 1974, but not for the widows of pension-eligible miners (J.A. 115-16). The Union accepted the Industry's offer and, in turn, dropped its demand on behalf of the widows of pension-eligible miners who died before December 6, 1974, in order to avoid a prolonged strike (J.A. 88, 92-96, 115-16).

Consequently, at the conclusion of the negotiations, the parties agreed that the future widows of miners who worked after the effective date of the 1974 Wage Agreement, December 6, 1974, would receive life-time health coverage under the 1974 Benefit Trust (P.A. 28a-29a; J.A. 92, 116). And, the parties agreed that the widows of pensioners who died before December 6, 1974, would receive life-time health coverage under the 1950 Benefit Trust. The parties agreed, however, that the widows in respondents' class, whose pension-eligible husbands died before December 6, 1974, while employed, would

continue to receive only five years of health coverage under the 1950 Benefit Trust. (P.A. 114a-16a.)

The Court of Appeals held that the exclusion of respondents' class from life-time health coverage violates Section 302(c)(5) of the Taft-Hartley Act, which requires that collectively-bargained trust funds be maintained "for the sole and exclusive benefit of the employees of the employer, and their families and dependents." 29 U.S.C. § 186(c)(5); *Robinson v. UMWA Health and Retirement Funds*, 640 F.2d 416, 421-23 (D.C. Cir. 1981) (P.A. 8a, 10a-13a). In the view of the Court, the "sole and exclusive benefit" provision in Section 302(c)(5) imposes a duty upon the collective bargaining parties to negotiate reasonable eligibility standards and to ". . . advance an adequate explanation for their action." *Robinson v. UMWA Health and Retirement Funds, supra*, 640 F.2d at 423 (P.A. 13a). Therefore, the Court holds that eligibility standards are subject to judicial review for reasonableness under Section 302(c)(5), regardless of ". . . who formulated the eligibility standards and how it was done," and even if the standards are the "fruits of labor negotiations." *Robinson v. UMWA Health and Retirement Funds, supra*, 640 F.2d at 418, 422-23 (P.A. 2a, 12a).

SUMMARY OF ARGUMENT

1. The Court of Appeals' decision that the terms of a collective bargaining agreement, embodied in an employee benefit trust, are subject to review by federal courts for reasonableness under Section 302(c)(5) of the Taft-Hartley Act, is inconsistent with decisions of the Supreme Court and contrary to the intent of Congress. The legislative history of the NLRA and the Taft-Hartley Act shows that Congress intended to regulate only collective bargaining procedures and not the substantive terms of the agreements reached thereby. In recognition of this fact, the Supreme Court has consistently rejected attempts by federal courts and other governmental bodies to substitute their judgment for that of the collective bargaining parties.

Of course, the Supreme Court has permitted governmental supervision and enforcement of collective bargaining procedures under the NLRA. And the Court has reviewed collective bargaining agreements for compliance with the substantive requirements of other federal statutes and the Constitution. In the absence, however, of a violation of the procedural requirements of the NLRA or the substantive requirements of any other federal law, the Court has refused to interfere with the terms of collective bargaining agreements.

The Court of Appeals decided that the requirement in Section 302(c)(5) of the Taft-Hartley Act that employee benefit trusts be administered for "the sole and exclusive benefit of . . . employees" imposes a substantive standard of reasonableness pursuant to which federal courts may review and revise eligibility rules adopted through collective bargaining. In support of its decision, the Court relied upon a series of cases delineating the scope of review of eligibility rules adopted, not by collective bargaining parties, but by trustees of employee benefit trusts, pursuant to a broad grant of discretion in the collective bargaining agreement. These cases, however, rest upon the established equitable principle that the discretionary acts of fiduciaries are subject to judicial review. Nowhere in the cases is there support for the Court's decision that it has

authority to review eligibility rules under the "sole and exclusive benefit" provision in Section 302(c)(5).

Nor for that matter does the "sole and exclusive benefit" provision in Section 302(c)(5) authorize such review. To the contrary, the legislative history of Section 302(c)(5) makes it clear that the only purpose of the "sole and exclusive benefit" provision is to prohibit an employee benefit trust from paying benefits to individuals who are not "employees" of contributing employers. Section 302(c)(5) does not, however, impose any substantive limitation on eligibility standards adopted through collective bargaining for the payment of benefits to employees. The decision of the Court of Appeals is not only unsupported by Section 302(c)(5), but, in light of ERISA, which comprehensively governs employee benefit plans and provides for review thereof, it serves no general purpose.

2. The decision of the Court of Appeals that the Union must bargain to impasse on behalf of the widows in respondents' class violates Section 8(b)(3) of the NLRA and the decision of the Supreme Court in *Allied Chemical and Alkali Workers of America v Pittsburgh Plate Glass*, 404 U.S. 157 (1971). In *Pittsburgh Plate Glass*, the Supreme Court held that non-employees, such as the deceased miners involved in this case, are not members of the collective bargaining unit, and, therefore, their benefits are not a mandatory subject of collective bargaining. Given that fact, the Union may not bargain to impasse on behalf of the widows in respondents' class under Section 8 of the NLRA. The Court of Appeals decided nevertheless that collective bargaining of employee benefit trusts was governed by Section 302(c)(5) of the Taft-Hartley Act. The Supreme Court, however, decisively rejected that opinion in *Pittsburgh Plate Glass*.

ARGUMENT

I.

The substantive terms of a collective bargaining agreement, embodied in an employee benefit trust, are not subject to review by federal courts for reasonableness, pursuant to the "sole and exclusive benefit" provision in Section 302(c)(5) of the Taft-Hartley Act.

The Court of Appeals held that the substantive terms of a collective bargaining agreement, embodied in an employee benefit trust, are subject to review by federal courts for reasonableness under the "sole and exclusive benefit" provision in Section 302(c)(5) of the Taft-Hartley Act. This holding, however, is inconsistent with applicable decisions of the Supreme Court and contrary to the intent of Congress as revealed by the legislative history of the national labor laws.

The fundamental premise on which the national labor laws are based is

> private bargaining under governmental supervision of the procedure alone, without any official compulsion over the actual terms of the contract. [*H. K. Porter Co. v. N.L.R.B.*, 397 U.S. 99, 108 (1970). *Accord, Local 24, International Brotherhood of Teamsters v. Oliver*, 358 U.S. 283, 295-96 (1959); *N.L.R.B. v. American National Insurance Co.*, 343 U.S. 395, 404 (1952).]

Congress never intended federal courts or other governmental bodies to "sit in judgment upon the substantive terms of collective bargaining agreements." *N.L.R.B. v. American National Insurance Co., supra*, 343 U.S. at 404; *see* S. Rep. No. 573, 74th Cong., 1st Sess. 12 (1935); H.R. Rep. No. 245, 80th Cong., 1st Sess. 19-20 (1947). This is made abundantly clear in the legislative reports, and House and Senate floor discussions, accompanying the enactment of the NLRA in 1935, and the amendments thereto made by Congress in the Taft-Hartley Act in 1947. S. Rep. No. 573, 74th Cong., 1st Sess. 12 (1935); *see H. K. Porter Co. v. N.L.R.B., supra*, 397 U.S. at 103-06; *N.L.R.B. v. American National Insurance Co., supra*,

343 U.S. at 401-04; *N.L.R.B. v Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45 (1937).

In enacting the NLRA in 1935, Congress was concerned only with collective bargaining procedures, and not with the results thereof. *N.L.R.B. v Jones & Laughlin Steel Corp., supra*, 301 U.S. at 45. In this respect, the report of the Senate Committee on Education and Labor states that the requirement of good-faith collective bargaining, imposed by Section 8 of the NLRA, "does not carry with it the duty to reach an agreement. . . ." S. Rep. No. 573, 74th Cong., 1st Sess. 12 (1935). Indeed, the report emphasizes that "the essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory." *Id.* And, the report "dispel[s] any possible false impression that [the NLRA] is designed to compel the making of agreements or to permit governmental supervision of their terms." *Id.*

Notwithstanding this legislative history, Congress subsequently recognized that the National Labor Relations Board ("Board") consistently violated the intent of the NLRA by using its authority thereunder to set "itself up as the judge of what concessions an employer may make and of the proposals and counter-proposals he may or may not make." H.R. Rep. No. 245, 80th Cong., 1st Sess. 19 (1947); *see H. K. Porter Co. v N.L.R.B., supra*, 397 U.S. at 105; *N.L.R.B. v American National Insurance Co., supra*, 343 U.S. at 404. Consequently, when it enacted the Taft-Hartley Act in 1947, Congress decided to define collective bargaining and expressly limit review thereof. Congress did so by amending the NLRA, by adding Section 8(d), 29 U.S.C. § 158(d), which provides that collective bargaining is the

> mutual obligation . . . to meet at reasonable times and confer in good faith . . . but *such obligation does not compel either party to agree to a proposal or require the making of a concession.* [29 U.S.C. § 158(d); emphasis added.]

By this definition, Congress reaffirmed its intent to limit supervision by federal courts and other governmental bodies over the substantive terms of collective bargaining agreements. S. Rep. No. 573, 74th Cong., 1st Sess. 12 (1935); *see*

H.R. Rep. No. 245, 80th Cong., 1st Sess. 19-20 (1947); *H. K. Porter Co. v. N.L.R.B.*, *supra*, 397 U.S. at 105-06; *Local 24, International Brotherhood of Teamsters v. Oliver*, *supra*, 358 U.S. at 295.

Consistent therewith, the Supreme Court has long recognized that the NLRA "exemplifies the faith of Congress in free collective bargaining between employers and their employees," *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337 (1953), and that "Congress was not concerned with the substantive terms upon which the parties agreed." *Local 24, International Brotherhood of Teamsters v. Oliver*, *supra*, 358 U.S. at 295; *Carbon Fuel Co. v. UMWA*, 444 U.S. 212, 219 (1979). Accordingly, the Court has on numerous occasions rejected attempts by federal courts and other governmental bodies to substitute their judgment for that of the collective bargaining parties. *E.g.*, *Local 24, International Brotherhood of Teamsters v. Oliver*, *supra*, 358 U.S. at 295-96; *N.L.R.B. v. American National Insurance Co.*, *supra*, 343 U.S. at 404; *Ford Motor Co. v. Huffman*, *supra*. In doing so, the Court has consistently upheld the authority of collective bargaining parties to "make such concessions and accept such advantages as . . . they believe will best serve the interests of the parties represented." *Ford Motor Co. v. Huffman*, *supra*, 345 U.S. at 338.

Of course, the authority of the collective bargaining parties under the NLRA is not absolute. *E.g.*, *Radio Officers' Union v. N.L.R.B.*, 347 U.S. 17 (1954); *Wallace Corp. v. N.L.R.B.*, 323 U.S. 248, 255-57 (1944). In fact, "there are limits to what a union or an employer may offer or extract. . . ." *UMWA v. Pennington*, 381 U.S. 657, 665 (1965). Because "they must bargain does not mean that the agreement reached may disregard other laws." *Id.*

A collective bargaining agreement may be reviewed and modified if it violates the Constitution, or a federal statute, or some clearly expressed public policy derived therefrom. *E.g.*, *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768 (1952) (agreement fostering racial discrimination against nonunit members, in violation of Constitution and Railway Labor Act, 45 U.S.C. § 151, *et seq.*, will be struck down); *Steele v.*

Louisville and Nashville R.R. Co., 323 U.S. 192 (1944) (agreement that discriminates against unit members because of their race, in violation of Constitution and Railway Labor Act, 45 U.S.C. § 151, *et seq.*, will be struck down); *Franks v. Bowman Transportation Co.*, 424 U.S. 747 (1976) (agreement promoting or perpetuating racially discriminatory employment practices, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, may be modified by a federal court pursuant to its broad remedial authority under the Act); *Norfolk and Western R. Co. v. Nemitz*, 404 U.S. 37 (1971) (agreement which substantially abrogates employees' rights under an ICC order, in violation of Section 5(2)(f) of the Interstate Commerce Act, 49 U.S.C. § 5(2)(f), is unenforceable); *Fishgold v. Sullivan Drydock and Repair Corp.*, 328 U.S. 275, 285 (1946) (agreement may not reduce veterans' service adjustment benefits under the Selective Training and Service Act).

In these cases, the Supreme Court has reviewed and set aside collective bargaining agreements where the parties have exceeded their authority and negotiated terms in violation of federal law. The Court has also recognized that the authority of the collective bargaining parties is limited by the procedural requirements set forth in the NLRA. *E.g.*, *Radio Officers' Union v. N.L.R.B.*, *supra*; *H. K. Porter Co. v. N.L.R.B.*, *supra*, 397 U.S. at 108, n.6. And, where the parties violate those requirements, the Court has prohibited them from enforcing the terms of the resulting agreement. *E.g.*, *N.L.R.B. v. Magnavox Co.*, 415 U.S. 322 (1974) (collective bargaining agreement that waives rights of employees under § 7 of the NLRA, 29 U.S.C. § 157, will be invalidated); *Radio Officers' Union v. N.L.R.B.*, *supra* (agreement that discriminates against nonunion employees to encourage union membership is illegal under § 8 of the NLRA, 29 U.S.C. § 158); *Elgin, Joliet and Eastern Railway Co. v. Burley*, 325 U.S. 711 (1945) (agreement denying the right of an employee to choose his representative in a claim against the employer, in violation of the Railway Labor Act, 45 U.S.C. § 151, *et seq.*, is invalid).

The union's authority is further limited by another procedural requirement. This requirement has been defined by the Supreme Court as the "duty of fair representation." *Hum-*

phrey v. Moore, 375 U.S. 335, 342 (1964). This duty limits the authority of a union to negotiate arbitrary distinctions. *Ford Motor Co. v. Huffman*, *supra*, 345 U.S. at 337; *Vaca v. Sipes*, 386 U.S. 171, 190-91 (1967); *Wallace Corp. v. N.L.R.B.*, *supra*, 323 U.S. at 255-56; *Brotherhood of Railroad Trainmen v. Howard*, *supra*, 343 U.S. at 774; *Steele v. Louisville & Nashville R.R. Co.*, *supra*, 323 U.S. at 201.

In this respect, however, the Supreme Court has recognized that "[a] wide range of reasonableness must be allowed a statutory bargaining representative" because

> [i]nevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. [*Ford Motor Co. v. Huffman*, *supra*, 345 U.S. at 338. *Accord*, *Humphrey v. Moore*, *supra*, 375 U.S. at 349; *Steele v. Louisville & Nashville R.R. Co.*, *supra*, 323 U.S. at 203.]

With this in mind, the Court has consistently refused to find a breach of the duty of fair representation in collective bargaining simply because a union takes "a good faith position contrary to that of some individuals whom it represents," or supports "the position of one group of employees against that of another," *Humphrey v. Moore*, *supra*, 375 U.S. at 349, or negotiates "contracts which may have unfavorable effects on some of the members . . . represented." *Steele v. Louisville & Nashville R.R. Co.*, *supra*, 323 U.S. at 203. *See also Ford Motor Co. v. Huffman*, *supra*; *Pellicer v. Brotherhood of Railway and Steamship Clerks*, 118 F. Supp. 254 (S.D. Fla. 1953), *aff'd*, 217 F.2d 205 (5th Cir. 1954), *cert. denied*, 349 U.S. 912 (1955).

Indeed, the Court has never found a breach of the duty of fair representation in collective bargaining in the absence of a violation of the procedural protections afforded by the NLRA or of the substantive rights granted by the Constitution or federal statute. *Humphrey v. Moore*, *supra*; *Ford Motor Co. v. Huffman*, *supra*; *Brotherhood of Railroad Trainmen v. Howard*, *supra*; *Steele v. Louisville & Nashville R.R. Co.*, *supra*;

Wallace Corp. v. N.L.R.B., supra; see Pellicer v. Brotherhood of Railway and Steamship Clerks, supra.

Therefore, it is apparent that, in the absence of union or employer action "destructive of the foundation on which collective bargaining must rest," *Mastro Plastics Corp. v. N.L.R.B.*, 350 U.S. 270, 281 (1956), or a violation of rights granted by federal statute, or "a grave constitutional issue that should be squarely faced," *Steele v. Louisville & Nashville R.R. Co., supra*, 323 U.S. at 208 (Murphy, J., concurring), federal courts may not interfere with the collective bargaining process. *E.g., Humphrey v. Moore, supra; Ford Motor Co. v. Huffman, supra; Brotherhood of Railroad Trainmen v. Howard, supra*, 343 U.S. at 774. So long as the collective bargaining process was conducted in good faith, a federal court may not review the terms of the bargaining agreement. *E.g., Ford Motor Co. v. Huffman, supra*, 345 U.S. at 338.

In this respect, the record before the Court of Appeals clearly showed that life-time health coverage for the widows in respondents' class had been the subject of prolonged, intense, and informed bargaining. The Union began negotiations by demanding a higher contribution rate and, for the first time, life-time health coverage under the 1950 and 1974 Benefit Trusts for all widows of pensioners and pension-eligible miners (J.A. 74-77, 80-82, 110). The Industry eventually agreed to the Union's demand for life-time health coverage under the 1974 Benefit Trust for future widows of miners who worked after December 6, 1974, the effective date of the 1974 Wage Agreement (J.A. 86, 93, 115). Nevertheless, the Industry consistently opposed the demand for life-time health coverage under the 1950 Benefit Trust for the widows of pensioners who died before December 6, 1974, and for the widows in respondents' class of pension-eligible miners who died before that date (J.A. 114-18).

The Industry "had some real financial problems" with increasing the benefits of these widows because no contributions would be made on their behalf under the 1974 Wage Agreement (J.A. 114-15). And the Industry was concerned that the cost of providing life-time health coverage to them, although

uncertain, would be substantial (J.A. 115-18, 120). In fact, the Industry was concerned that the cost of providing life-time health coverage for these widows would result in inadequate funding of the 1950 Benefit Trust unless the contribution rate was increased, and the Industry was opposed to a higher contribution rate (J.A. 114-16).

Notwithstanding the Industry's opposition, the Union continued, until the last day of the existing collective bargaining agreement, to press its demand on behalf of the widows of pensioners who died before December 6, 1974, and the widows in respondents' class of pension-eligible miners who died before that date (J.A. 90-92, 115-16). On that day, both parties were determined to conclude negotiations in order to avoid a prolonged strike (J.A. 88, 94-96, 115-16). To that end, the Industry offered to accept the Union's demand for a higher contribution rate, and, together therewith, agreed to life-time health coverage for the widows of pensioners who died before December 6, 1974 (J.A. 115-16). The Industry, however, continued to oppose the Union's demand for life-time health coverage for the widows of pension-eligible miners in respondents' class (J.A. 115-16).

In view of the Industry's agreement to a higher contribution rate and the Industry's acceptance of its demand for life-time health coverage for the widows of pensioners who died before December 6, 1974, the Union withdrew its demand on behalf of the widows in respondents' class in order to avert a prolonged strike. Consequently, although they agreed to provide life-time health coverage to all other widows, the parties agreed that the widows of pension-eligible miners in respondents' class would receive only five years of health coverage. (J.A. 93-96, 99-100, 115-16.)

The Court of Appeals acknowledged that this agreement was ". . . a compromise hammered out by 'explicit, informed and intense' bargaining on a problem difficult of resolution in a mutually acceptable manner." *Robinson v. UMWA Health and Retirement Funds, supra*, 640 F.2d at 422 (P.A. 11a-12a). Therefore, the Court should have declined to review the agreement of the Union and Industry to exclude respondents'

class from life-time health coverage. *E.g., Humphrey v Moore, supra; H. K. Porter Co. v N.L.R.B., supra*, 397 U.S. at 103-04; *Carbon Fuel Co. v. UMWA, supra*, 444 U.S. at 219; *see N.L.R.B. v. American National Insurance Co., supra*, 343 U.S. at 404; *N.L.R.B. v. Jones & Laughlin Steel Corp., supra*, 301 U.S. at 45; H.R. Rep. No. 245, 80th Cong., 1st Sess. 19-20 (1947); S. Rep. No. 573, 74th Cong., 1st Sess. 12 (1935). Instead, contrary to authority, the Court decided to "become a party to the negotiations and impose its own views of a desirable settlement." *H. K. Porter Co. v N.L.R.B., supra*, 397 U.S. at 103-04; *Carbon Fuel Co. v. UMWA, supra*, 444 U.S. at 219; *see, e.g., N.L.R.B. v. Jones & Laughlin Steel Corp., supra*, 301 U.S. at 45; H.R. Rep. No. 245, 80th Cong., 1st Sess. 19-20 (1947); S. Rep. No. 573, 74th Cong., 1st Sess. 12 (1935).

The Court of Appeals justifies its intervention by asserting that eligibility rules of employee benefit trusts established through collective bargaining are subject to judicial review for reasonableness under the "sole and exclusive benefit" provision in Section 302(c)(5) of the Taft-Hartley Act. *Robinson v. UMWA Health and Retirement Funds, supra*, 640 F.2d at 422 (P.A. 12a). In support of this proposition, the Court relies on a series of cases delineating the scope of review of acts undertaken, not by collective bargaining parties, but by trustees of employee benefit trusts, pursuant to a broad grant of discretion vested in them by the collective bargaining agreement. *Robinson v. UMWA Health and Retirement Funds, supra*, 640 F.2d at 420-21 (P.A. 7a-10a). Contrary to the Court's assertion, however, these cases do not support the proposition that authority to review eligibility rules for reasonableness emanates from the "sole and exclusive benefit" provision in Section 302(c)(5). Rather, the cases demonstrate that such authority rests on the established equitable principle that the discretionary acts of fiduciaries are subject to judicial review. *Danti v. Lewis*, 312 F.2d 345, 348 (D.C. Cir. 1962), *citing Hobbs v. Lewis*, 159 F. Supp. 282 (D.D.C. 1958).

This is illustrated by the decision in *Kosty v. Lewis*, 319 F.2d 744 (D.C. Cir. 1963), *cert. denied*, 375 U.S. 964 (1964), which, like its predecessor, *Danti v. Lewis, supra*, involved a challenge to the manner in which trustees had applied otherwise

unobjectionable eligibility rules to particular individuals. In *Kosty*, as in *Danti*, the Court of Appeals concluded that the trustees' actions were procedurally unfair, and therefore unreasonable. *Kosty v. Lewis, supra*, 319 F.2d at 749; *Danti v. Lewis, supra*, 312 F.2d at 349. In doing so, the Court in *Kosty* stated:

> The institutional arrangements creating this [employee benefit trust] Fund . . . are cast expressly in fiduciary form; and the Trustees, like all fiduciaries, are subject to judicial correction in a proper case upon a showing that they have acted arbitrarily or capriciously towards one of the persons to whom their trust obligations run. [*Kosty v. Lewis, supra*, 319 F.2d at 747.]

Subsequently, the Court of Appeals applied the standard of review announced in *Kosty* in a case challenging the reasonableness of an eligibility rule adopted by trustees pursuant to a broad grant of discretion. *Roark v. Lewis*, 401 F.2d 425 (D.C. Cir. 1968) ("*Roark* I"). In *Roark* I, the Court ruled that such eligibility rules are, like other trustee action, subject to review for reasonableness. *Id.* In so ruling, the Court noted that,

> [a]lthough none of the reported cases we have found which deal with UMW pension applications has directly confronted the question of court review of eligibility requirements, we see no reason why the previously announced standard (to determine whether the trustees' conduct was arbitrary or capricious) should not apply. Trustees' action in prescribing eligibility requirements affects the rights of potential beneficiaries in the same vital way as do other trustees' actions. [*Id.* at 427; footnote omitted.]

Significantly, nowhere in its opinion in *Roark* I does the Court of Appeals announce that its standard of review is predicated on the "sole and exclusive benefit" provision in Section 302(c)(5). Indeed, the only discussion of this section occurs when the Court rejects the argument, advanced by the trustees, that the challenged eligibility rule, requiring an applicant to work for a contributing employer for one year immediately before retirement, was mandated by the "sole and exclusive benefit" provision in Section 302(c)(5). *Roark v. Lewis, supra*, 401 F.2d at 428.

In a later phase of the case, the Court of Appeals explained that the "sole and exclusive benefit" provision in Section 302(c)(5) required no more than the assurance that only "employees" of contributing employers receive benefits from the trust pursuant to the eligibility rules adopted thereunder. *Roark v. Boyle*, 439 F.2d 497, 501-02 (D.C. Cir. 1970) ("*Roark* II"). The Court then found that the rule in question did not provide that assurance and, therefore, was unreasonable. *Id.* at 502.

As in its earlier decisions, however, the Court of Appeals in *Roark* II found its authority to review the challenged eligibility rule in the equitable doctrine permitting judicial review of fiduciary discretion. *Id.* This was made clear in the last case to consider a challenge to this particular eligibility rule. In *Pete v. UMWA Welfare and Retirement Fund of 1950*, 517 F.2d 1275 (D.C. Cir. 1975) (*en banc*), the Court of Appeals, sitting *en banc*, repeatedly emphasized that it sat as a court of equity, and that, as such, its ". . . role is limited to ascertaining whether the Trustees' broad discretion has been abused. . . ." *Id.* at 1283.[6]

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[6] In denying the petition for rehearing below, the Court of Appeals amended its opinion by continuing footnote 51 to state that the Court also relied upon *N.L.R.B. v. Magnavox Co.*, *supra*, 415 U.S. 322 (P.A. 21a). *Magnavox*, however, provides the Court with no more support than the cases relied upon by it in the original opinion.

It is true that the Supreme Court invalidated a collective bargaining agreement in *Magnavox*. The collective bargaining agreement, however, resulted from an unfair labor practice and violated the rights of employees under Section 7 of the NLRA, 29 U.S.C. § 157. In recognition of this fact, the Court invalidated the agreement on the basis that good-faith collective bargaining in the economic area depends upon the free exercise of the procedural rights guaranteed to employees by Section 7. *N.L.R.B. v. Magnavox Co.*, *supra*, 415 U.S. at 325-27. The Court, however, reaffirmed the well-established principle that the agreements of collective bargaining parties with respect to wages and other economic benefits are not subject to judicial interference. *N.L.R.B. v. Magnavox Co.*, *supra*, 415 U.S. at 325; *see Mastro Plastics Corp. v. N.L.R.B.*, *supra*.

Following the decisions in *Danti v. Lewis*, *supra*, and *Kosty v. Lewis*, *supra*, other courts, not relied upon below, decided that they also have authority to review the discretionary acts of Taft-Hartley trustees. Unlike the Court of Appeals, however, these courts base their authority on Section 302(e) of the Taft-Hartley Act, which, in their view, confers jurisdiction to review an employee benefit plan that suffers from a "structural violation" of Section 302(c)(5). *E.g.*, *Bowers v. Ulpiano Casal, Inc.*, 393 F.2d 421 (1st Cir. 1968); *Lugo v. Employees Retirement Fund of the Illumination Products Industry*, 529 F.2d 251 (2d Cir.), *cert. denied*, 429 U.S. 826 (1976); *Nedd v. United Mine Workers of America*, 556 F.2d 190 (3d Cir. 1977), *cert. denied*, 434 U.S. 1013 (1978); *Snider v. All State Administrators, Inc.*, 481 F.2d 387 (5th Cir. 1973), *cert. denied*, 415 U.S. 957 (1974); *Johnson v. Botica*, 537 F.2d 930 (7th Cir. 1976); *Alvares v. Erickson*, 514 F.2d 156 (9th Cir.), *cert. denied*, 423 U.S. 874 (1975); *Ader v. Hughes*, 570 F.2d 303 (10th Cir. 1978); *see Local No. 5, etc. v. Mahoning and Trumbull County Building Trades Welfare Fund*, 541 F.2d 636 (6th Cir. 1976); *Blassie v. Kroger Co.*, 345 F.2d 58 (8th Cir. 1965).

The scope of the "structural violation" doctrine remains unsettled. *Knauss v. Gorman*, 583 F.2d 82, 86-87 (3d Cir. 1978). For example, in *Knauss v. Gorman*, *supra*, the Third Circuit adopted the view that, where trustees, acting under a grant of discretion, adopt an eligibility rule which arbitrarily excludes an employee from benefits, the employee benefit trust suffers from a "structural violation" of the "sole and exclusive benefit" provision in Section 302(c)(5). *Id.* at 87. The Ninth Circuit, in contrast, does not regard an eligibility rule as a violation of the "sole and exclusive benefit" provision unless the rule causes the diversion of trust assets to someone other than an employee. *Turner v. Local Union No. 302, etc.*, 604 F.2d 1219, 1228 (9th Cir. 1979). The First Circuit, however, has taken per-

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For similar reasons, *Brotherhood of Railroad Trainmen v. Howard*, *supra*, and *Steele v. Louisville & Nashville R.R. Co.*, *supra*, also relied upon by the Court of Appeals in its amendment to footnote 51, do not support judicial interference in this case. *See* Brief for Petitioners, *supra*, at 15-16.

haps the narrowest view of the "structural violation" doctrine in *Bowers v. Ulpiano Casal, Inc.*, *supra*. In that case, the Court, relying on *Arroyo v. United States*, 359 U.S. 419 (1959) and *United States v. Ryan*, 350 U.S. 299 (1956), limited its authority to review only those acts which constitute crimes under Section 302(a) of the Taft-Hartley Act. *Bowers v. Ulpiano Casal, Inc.*, *supra*, 393 F.2d at 424-25; *see Lugo v. Employees Retirement Fund of the Illumination Products Industry*, *supra*, 529 F.2d at 254-55 (endorsing the narrow view of Section 302(c)(5) and expressing doubt that the "sole and exclusive benefit" provision confers ". . . the power to create a federal common law governing the management of pension plans. . . ." *Id.* at 255).

The reason for this diversity of views on the scope of review under Section 302(c)(5) is apparent when the "structural violation" doctrine is traced to its origin. Virtually every court which follows the doctrine began its analysis of Section 302(c)(5) with the decisions of the Court of Appeals in *Danti v. Lewis*, *supra*, *Kosty v. Lewis*, *supra*, and *Roark v. Lewis*, *supra*. *E.g.*, *Gomez v. Lewis*, 414 F.2d 1312, 1313-14 (3d Cir. 1969); *Lee v. Nesbitt*, 453 F.2d 1309, 1311 (9th Cir. 1972). And, as we have shown, these cases do not, in fact, rest on an analysis of Section 302(c)(5), but rather on the authority of an equity court to review the discretionary acts of fiduciaries.

In the instant case, the Court of Appeals lost sight of the equitable origin of its authority in *Danti*, *Kosty*, and *Roark*, and concluded that its authority in those cases to review the discretionary acts of trustees flowed from the "sole and exclusive benefit" provision in Section 302(c)(5), which the Court believed ". . . imposes substantive limitations on the nature of the eligibility rules that may be selected." *Robinson v. UMWA Health and Retirement Funds*, *supra*, 640 F.2d at 421 (P.A. 8a). The Court, therefore, concluded that, in a challenge to collectively-bargained eligibility rules, "who formulated the eligibility standards and how it was done are irrelevancies . . ." and proceeded to review the product of collective bargaining for "reasonableness." *Id.* at 422 (P.A. 10a-12a). To say, however, that the "sole and exclusive benefit" provision in Section 302(c)(5) imposes a standard of reasonableness under

which the courts may review and revise the fruits of collective bargaining is to ignore the legislative purpose of the Taft-Hartley Act.

In the Taft-Hartley Act, Congress sought to promote numerous policies. *Carbon Fuel Co. v. UMWA*, *supra*, 444 U.S. at 218; *H. K. Porter Co. v. N.L.R.B.*, *supra*, 397 U.S. at 103-04. "One policy of particular importance—if not the overriding one—was the policy of free collective bargaining." *Carbon Fuel Co. v. UMWA*, *supra*, 444 U.S. at 218 (citations omitted). Congress recognized that the collective bargaining process had been abused by certain practices of employers and labor unions under the NLRA. *Arroyo v. United States*, *supra*, 359 U.S. at 425. And Congress sought to correct those practices which it believed to be "inimical to the integrity of the collective bargaining process." *Id.*

Of particular concern to Congress was the practice of labor unions to demand employer payments to welfare funds "controlled by union leaders under such loose standards that they are free to give or withhold benefits at their pleasure." 93 Cong. Rec. A-2252 (1947) (remarks of Senator Ball). Congress saw in this practice the possible

> corruption of collective bargaining through bribery of employee representatives by employers, . . . extortion by employee representatives, and . . . abuse by union officers of the power which they might achieve if welfare funds were left to their sole control. [*Arroyo v. United States*, 359 U.S. 419, 425-26 (1959). *Accord*, *Walsh v. Schlecht*, 429 U.S. 401, 410-11 (1977).]

Because of the possibility of such abuses, a bill was introduced in the House, H.R. 3020, to provide, *inter alia*, that it would be an unfair labor practice for any employer to assist a labor organization "through making payments of any kind . . . to any fund or trust" over which the organization exercised any control. H.R. 3020, 80th Cong., 1st Sess. § 8(a)(2) (1947). The House Committee on Education and Labor approved the bill in order to control "these great, unregulated . . . funds derived from exactions upon employers." H.R. Rep. No. 245, 80th Cong., 1st Sess. 29 (1947).

A minority of the Committee, however, objected to the bill on the basis that it would lead to the end of legitimate welfare funds. Nevertheless, the minority recognized the abuses inherent in union control of such funds, and stated that it "would have no objection to requiring that trust funds to which an employer makes contributions be jointly controlled by the employer and the union. . . ." H.R. Rep. No. 245, 80th Cong., 1st Sess. 78-79 (1947).

The minority's objections were addressed by an amendment to the corresponding Senate bill, S. 1126, which became Section 302(c)(5) of the Taft-Hartley Act. The amendment, unlike H.R. 3020, permitted employer payments to a welfare fund, provided that the fund was established as a legitimate trust fund "for the sole and exclusive benefit of the employees," that it was jointly administered by the employer and the union, and that the benefits payable therefrom were "set forth in detail in the [written] agreement creating the fund. . . ." 93 Cong. Rec. 4678 (1947) (remarks of Senator Ball). 29 U.S.C. § 186(c)(5); *see* 93 Cong. Rec. 4746-47, 4750-51, 4752-53 (1947).

The sponsors of the amendment stated that the specific purpose thereof was "to prohibit the labor unions from requiring welfare funds to be paid into the treasuries of the labor unions," 93 Cong. Rec. 4678 (1947) (remarks of Senator Byrd), and to "make sure that [welfare funds] are . . . used actually for the employees of the employers who contribute to them, and that they shall not degenerate into bribes." *Id.* (remarks of Senator Ball); *see* 93 Cong. Rec. 4678-79, 4746-47, 4752-53, A-2252 (1947); S. Rep. No. 105, 80th Cong., 1st Sess. 52 (1947); *Arroyo v. United States, supra*, 359 U.S. at 424-26; *Turner v. Local Union No. 302, etc., supra*, 604 F.2d at 1227-28.

In view of the legislative history, it is readily apparent that the requirement in Section 302(c)(5) of the Taft-Hartley Act that welfare funds must be used "for the sole and exclusive benefit of the employees," was intended only to prohibit the payment of benefits to union officials or other non-employees. *E.g.*, 93 Cong. Rec., 4678-79, 4745-47, 4752-53 (1947); S. Rep. No. 105, 80th Cong., 1st Sess. 52 (1947); H.R. Conf. Rep. No.

510, 80th Cong., 1st Sess. 66-67 (1947); *Arroyo v. United States*, *supra*, 359 U.S. at 425-26.

It is equally apparent that Section 302(c)(5) does not impose any limitation on the eligibility standards adopted through collective bargaining for payment of benefits to employees, but, instead, only requires that the standards negotiated be "specified in a written agreement." 29 U.S.C. § 186(c)(5)(B); 93 Cong. Rec. 4746, 4753 (1947) (remarks of Senator Taft); 93 Cong. Rec. 4678 (1947) (remarks of Senator Ball). As Senator Ball stated, "[a]ll [Section 302(c)(5)] requires is that the so-called welfare fund shall be jointly administered," that "the specific purposes of the fund and the benefits to which employees are entitled shall be set forth in detail in the agreement creating the fund," and that the fund be "actually used for the benefit to employees specified in the agreement. . . ." *Id.* (remarks of Senator Ball).

Consequently, so long as collectively-bargained eligibility standards are set forth in a written agreement and do not permit the payment of benefits to persons other than employees, they are not subject to judicial review under Section 302(c)(5), 29 U.S.C. § 186(c)(5). *Turner v. Local Union No. 302, etc.*, *supra*, 604 F.2d at 1227-28; *see Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 169-70 (1971); *Walsh v. Schlecht*, *supra*, 429 U.S. at 408, 410; *Roark v. Boyle*, *supra*, 439 F.2d at 501-02, 505-06.[7]

Of course, collectively-bargained employee benefit plans are subject to review for compliance with ERISA. By enacting ERISA, Congress sought to protect the "equitable character

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[7] Nevertheless, the Board and the federal courts may review the actions of collective bargaining parties for unfair labor practices under Section 8 of the NLRA, 29 U.S.C. § 158. *E.g.*, *Radio Officers' Union v. N.L.R.B.*, *supra*. And the federal courts may review the actions of the employees' bargaining representatives for a breach of their duty of fair representation under Section 9 of the NLRA. *E.g.*, *Humphrey v. Moore*, *supra*; *Ford Motor Co. v. Huffman*, *supra*. A breach of the duty of fair representation in collective bargaining, however, will not generally be found in the absence of a violation of the Constitution or a federal statute. *E.g.*, *Humphrey v. Moore*, *supra*.

. . . and . . . financial soundness" of employee benefit plans, 29 U.S.C. § 1001(a), and to protect "the interests of participants in employee benefit plans and their beneficiaries. . . ." 29 U.S.C. § 1001(b). Congress accomplished this protection by adopting standards for employee benefit plans, including standards for participation, vesting, and funding, standards for reporting and disclosure, and standards of fiduciary conduct. 29 U.S.C. §§ 1001(b),(c), 1021-1132. And, Congress provided that any violation of these standards is subject to challenge in the federal courts by a plan participant, beneficiary, or fiduciary, or by the Secretary of Labor under Section 502. 29 U.S.C. § 1132.

Certainly, in enacting this comprehensive legislation governing employee benefit plans, including a provision for the judicial review of a violation thereof, "Congress believed that it was filling a regulatory void. . . ." *International Brotherhood of Teamsters v. Daniel*, 439 U.S. 551, 570 (1979). And, in light thereof, the existence of this comprehensive legislation undercuts all arguments for permitting judicial review of collectively-bargained employee benefit plans under Section 302(c)(5) of the Taft-Hartley Act. Indeed, the decision of the Court of Appeals is not only unsupported by authority under the NLRA and Section 302(c)(5) of the Taft-Hartley Act, but, in light of ERISA, it serves no general purpose. *See International Brotherhood of Teamsters v. Daniel, supra*, 439 U.S. at 570.

II.

The decision of the Court of Appeals that Section 302(c)(5) of the Taft-Hartley Act requires the Union to bargain to impasse on behalf of the widows in respondents' class, who are not members of the bargaining unit, violates Section 8(b)(3) of the NLRA and conflicts with decisions of the Supreme Court.

The Court of Appeals decided that Section 302(c)(5) of the Taft-Hartley Act imposes a duty upon the collective bargaining parties to negotiate reasonable eligibility standards and to "advance an adequate explanation for their action." *Robinson v. UMWA Health and Retirement Funds, supra*, 640

F.2d at 423 (P.A. 13a). In this respect, the Court found "no legally acceptable justification" for the exclusion of respondents' class from life-time health benefits. *Id.* at 424 (P.A. 14a). According to the Court, it was not ". . . enough that the particular eligibility standards were adopted simply because that enabled resolution of a collective bargaining dispute," and avoidance of a prolonged strike. *Id.* at 424 (P.A. 14a). Indeed, Judge Davis added, in his concurring opinion, that "there was no quid pro quo for the dropping of labor's insistence on inclusion of this class," but, instead, "a deliberate and hurried determination . . . to sacrifice this class" to avoid a conflict. *Id.* at 424 (Davis, J., concurring) (P.A. 15a-16a). It is submitted, however, that the Union's decision to withdraw its demand on behalf of the widows in respondents' class in order to avoid a strike was consistent with the Supreme Court's mandate in *Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass Co., supra.*

In *Pittsburgh Plate Glass*, the Supreme Court ruled that retired workers were not members of the collective bargaining unit, and, therefore, medical coverage for those workers was not a mandatory subject of collective bargaining under Section 8(d) of the NLRA, 29 U.S.C. § 158(d). Like the retired workers in *Pittsburgh Plate Glass*, the deceased miners from whom respondents' class members derive their status are not part of the collective bargaining unit. To be a member of the collective bargaining unit, an individual must be an "employee" within the meaning of Section 2(3) of the NLRA, 29 U.S.C. § 152(3). An "individual who has ceased work without expectation of further employment" because of death is not an "employee". *Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass Co., supra*, 404 U.S. at 168. Accordingly, the demands made by the Union on behalf of the widows of such individuals are non-mandatory subjects of bargaining. *Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass Co., supra*, 404 U.S. at 180-82; *Turner v. Local Union No. 302, etc., supra*, 604 F.2d at 1225.

Of course, the Union was free to, and did, engage in permissive bargaining on behalf of the widows in respondents' class.

Allied Chemical and Alkali Workers of America u Pittsburgh Plate Glass Co., supra, 404 U.S. at 171, n.11. The Industry was equally free to reject, unequivocally, the Union's demands on behalf of the class. *N.L.R.B. u Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342, 349 (1958). In that event, however, the Union could not bargain to impasse on the issue. To have done so would clearly constitute an unfair labor practice under Section 8(b)(3) of the NLRA, 29 U.S.C. § 158(b)(3). *N.L.R.B. u Wooster Div. of Borg-Warner Corp., supra*, 356 U.S. at 349; *N.L.R.B. u Massachusetts Nurses Ass'n*, 557 F.2d 894, 899 (1st Cir. 1977).

The Court of Appeals decided, nevertheless, that the Union had a duty to bargain to impasse on behalf of the widows in respondents' class, even though to do so would constitute an unfair labor practice under Section 8(b)(3) of the NLRA, because Section 302(c)(5) of the Taft-Hartley Act governs collective bargaining of employee benefit trusts. The Court fails to recognize that the Supreme Court decisively rejected this conclusion in *Allied Chemical and Alkali Workers of America u Pittsburgh Plate Glass Co., supra.*

It is true that in *Pittsburgh Plate Glass*, the Supreme Court noted that the union's role in the administration of an employee benefit trust, negotiated under Section 8 of the NLRA, was governed by Section 302(c)(5) of the Taft-Hartley Act. Nevertheless, the Court also stated that

> . . . the union's role in the administration of the [302(c)(5)] fund is of a far different order from its duties as collective bargaining agent. To accept the Board's reasoning that the union's § 302(c)(5) responsibilities [in the administration of the fund] dictate the scope of the § 8(a)(5) collective-bargaining obligation would be to allow the tail to wag the dog. [*Allied Chemical and Alkali Workers of America u Pittsburgh Plate Glass Co., supra*, 404 U.S. at 170-71.]

Accordingly, the denial of life-time health coverage for the widows in respondents' class, set forth in a collective bargaining agreement negotiated pursuant to the requirements of

Section 8 of the NLRA, is not subject to judicial review under Section 302(c)(5) of the Taft-Hartley Act.[8]

[8] In deciding that benefits for retired employees was not a mandatory subject of bargaining in *Pittsburgh Plate Glass*, this Court noted that, where a union and employer voluntarily agree on such benefits, retirees are not left without protection. Vested retirement benefits cannot be changed without the retirees' consent, and retirees could, in proper cases, pursue remedies under state contract law and federal labor law. *Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass Co.*, *supra*, 404 U.S. at 181, n.20. Since this Court's decision in *Pittsburgh Plate Glass*, Congress has given retirees added protection against the loss of benefits by enacting ERISA. *International Brotherhood of Teamsters v. Daniel*, *supra*, 439 U.S. at 569-70. In its decision in this case, however, the Court of Appeals would go even further, and recognize a right in retirees to demand that collective bargaining parties agree to benefits. *Robinson v. UMWA Health and Retirement Funds*, *supra*, 640 F.2d at 423-24 (P.A. 12a-14a). Petitioners suggest that the decision below is in obvious conflict with this Court's decision in *Pittsburgh Plate Glass*.

CONCLUSION

Upon the foregoing, it is respectfully submitted that the judgment of the court below is erroneous as a matter of law and should, therefore, be reversed, and the case remanded with instructions to enter judgment in favor of the Trustees of the 1950 Benefit Trust.

Respectfully submitted,

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